



STATE BOARD OF EQUALIZATION  
450 N STREET, SACRAMENTO, CALIFORNIA  
(PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)  
TELEPHONE (916) 327-4975  
FAX (916)324-2586

JOHAN KLEHS  
First District, Hayward

DEAN F. ANDAL  
Second District, Stockton

ERNEST J. DRONENBURG, JR.  
Third District, San Diego

KATHLEEN CONNELL  
Controller, Sacramento

JOHN CHIANG  
Acting Member  
Fourth District, Los Angeles

E. L. SORENSEN, JR.  
Executive Director

February 20, 1997

TO COUNTY ASSESSORS,  
COUNTY COUNSELS,  
ASSESSMENT APPEALS BOARDS,  
AND OTHER INTERESTED PARTIES:

No. 97/09

NOTICE OF PROPOSED REGULATORY ACTION  
BY THE  
STATE BOARD OF EQUALIZATION

AMEND PROPERTY TAX RULES 462.020, 462.160, 462.220,  
and 462.240, CHANGE IN OWNERSHIP

PUBLIC HEARING: WEDNESDAY, APRIL 9, 1997, AT 1:30 P.M.

NOTICE IS HEREBY GIVEN:

The State Board of Equalization, pursuant to the authority vested in the Board by Section 15606(c) of the Government Code proposes to amend Regulations sections 462.020, 462.160, 462.220 and 462.240 in Title 18, Division 1 of the California Code of Regulations. A public hearing on the proposed regulations will be held in Room 121, 450 N Street, Sacramento, at 1.30 p.m., or as soon thereafter as the matter may be heard, on April 9, 1997. Any person interested may present statements or arguments orally at that time and place. Written statements or arguments will be considered by the Board if received by April 9, 1997.

INFORMATIVE DIGEST

1. Rule 462.020 Change in Ownership - Tenancies in Common.

The proposed amendments reformat the subdivisions to conform with the other change in ownership rule formats, delete a provision that is no longer effective because the limitations

period has expired and add references to the parent-child and grandparent-grandchild exclusions from change in ownership. There are also textual changes and examples added which clarify existing provisions relating to the transfer of de minimis interests that do not constitute changes in ownership.

## 2. Rule 462.160 Change in Ownership - Trusts.

The proposed amendments reformat the subdivisions to conform with the other change in ownership rule formats and more precisely define transfers to trusts. Added are references to parent-child and grandparent-grandchild exclusions from change in ownership, examples of the creation of trusts and examples of the termination of trusts. A new subdivision generally defines a Massachusetts or Business trust as a type of legal entity which is not included within the meaning of this rule.

## 3. Rule 462.220 Change in Ownership - Interspousal Transfers.

New subdivisions (a) and (b) are added. Subdivision (a) reflects the language of Revenue and Taxation Code Section 63 which excludes from change in ownership any interspousal transfer including transfers of ownership interests in legal entities; subdivision (b) interprets Section 63 to exclude transfers between spouses which would otherwise be counted for purposes of determining a change in control under Revenue and Taxation Code Section 64(c). An example is added to demonstrate the application of new subdivision (b). Another example has been added to illustrate change in ownership transfers upon the death of a spouse from a trust in which both spouses hold equal interests to two separate "sub-trusts" in which the surviving spouse is the sole present beneficiary.

## 4. Rule 462.200 Change in Ownership - The Following Transfers Do Not Constitute a Change in Ownership.

Subdivision (d) is amended to reflect amendments to Revenue and Taxation Code Section 66(c) which excludes from change in ownership employee benefit plan acquisitions of the stock of employer corporation whereby the employee benefit plan obtains direct or indirect ownership or control of more than 50 percent of the employer corporation's voting stock. Subdivision (e) which defines transfers excluded from change in ownership pursuant to Section 62(a)(2) is deleted as redundant because this provision is set forth in every other change in ownership rule, where applicable. New subdivisions (f), (g), (h), (i), and (j) are added to reflect the adoption of subdivisions (l), (m) and (n) of Revenue and Taxation Code Section 62, and Revenue and Taxation Code Sections 62.1 and 62.2 which exclude specified transfers from change in ownership. Adds an example to illustrate a transfer which results from reformation or correction of a deed as excluded from change in ownership.

The express terms of the proposed action, written in plain English, are available from the agency contact person named in this notice.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The State Board of Equalization has determined that the proposed amendments do not impose a mandate on local agencies or school districts. Further, the Board has determined that the amendments will result in no additional direct or indirect costs to any State agency or any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, and that there are no other non-discretionary costs or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

EFFECT ON BUSINESS

Pursuant to Government Code Section 11346.53(c), the Board of Equalization finds that the adoption of the amendments to Rules 462.020, 462.160, 462.220, and 462.240 will not have a significant adverse economic impact on business.

The adoption of the proposed amendments to these regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The amendment to the regulation as proposed will not be detrimental to California businesses in competing with businesses in other states.

The proposed regulation may affect small business.

ADVERSE ECONOMIC IMPACT ON PRIVATE PERSONS/BUSINESSES

There will be no adverse economic impact on private businesses or persons.

FEDERAL REGULATIONS

Rules 462.020, 462.160, 462.220 and 462.240 and the proposed changes have no comparable Federal regulations.

PLAIN ENGLISH STATEMENT

Preparation of the proposed amendments included consideration of the "plain English" requirement. One of the purposes for the amendments is to define technical terms in more simple language.

AUTHORITY

Government Code Section 15606, subdivision (c).

REFERENCE

California Constitution, Article XIII A, Section 2; Revenue and Taxation Code Sections 60, 61, 62, 62.1, 62.2, 63, 63.1, 63.1 note, 64, 65, 65.1, 66, 67.

CONTACT

Questions regarding the content of the proposed regulations should be directed to Mr Louis Ambrose, Tax Counsel, at P.O. Box 942879, 450 N Street, MIC 82, Sacramento, CA 94279-0082. Telephone: (916) 445-5580 FAX (916) 323-3387

Written comments for the Board's consideration or requests to present testimony and bring witnesses to the public hearing should be directed to Ms. Mary Ann Stumpf, Regulations Coordinator, (916) 322-9569, and P O Box 942879, 450 N Street, MIC 80, Sacramento, CA 94279-0080.

ALTERNATIVES CONSIDERED

The Board must determine that no alternative considered would be more effective in carrying out the purpose for which this action is proposed or be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF STATEMENT OF REASONS AND OF TEXT OF PROPOSED REGULATIONS

The Board has prepared statements of reasons and underscored versions (express terms) of the proposed regulations. Those documents and all information on which the proposals are based are available to the public upon request. The Rulemaking files are available for public inspection at 450 N Street, Sacramento, California. Requests for copies should be addressed to Ms. Mary Ann Stumpf, Regulations Coordinator, (916) 322-9569, at P O Box 942879, 450 N Street, MIC: 80, Sacramento, CA 94279-0080.

ADDITIONAL COMMENTS

Following the hearing, the State Board of Equalization may in accordance with law adopt the proposed regulations if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulations. The text of any modified regulation will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified regulation will be available to the public from Ms Stumpf. The

State Board of Equalization will consider written comments on the modified regulation for fifteen days after the date on which the modified regulation is made available to the public.

Dated:

STATE BOARD OF EQUALIZATION



E. L. Sorensen, Jr.  
Executive Director

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Rule 462.020 CHANGE IN OWNERSHIP - TENANCIES IN COMMON

~~(a) Except as is otherwise provided in subdivision (b), the~~  
General Rule. The creation, transfer, or termination of a tenancy in common interest is a change in ownership of the undivided interest transferred.

(b) EXCLUSIONS EXCEPTIONS. The following transfers do not constitute a change in ownership:

(1) The transfer is between or among co-owners and results in a change in the method of holding title but does not result in a change in the proportional ownership interests of the co-owners, such as:

- (A) a partition,
- (B) a transfer from a co-tenancy to a joint tenancy, or
- (C) a transfer from a co-tenancy to a legal entity which results solely in a change in the method of holding title and in which the proportional ownership interests in the property remain the same after the transfer. (Such transferees shall be considered to be the "original co-owners" of the property for purposes of determining whether a change in ownership has occurred upon the subsequent ~~transfer(s)~~ transfers of the ownership interests in the property.)

Example 1: A and B own a parcel of real property as tenants in common each owning a 50% interest. They transfer the property to a newly formed corporation each receiving 50% of the stock. Such a transfer would not be regarded as a change in ownership.

~~(2) The transfer occurred between 3/1/75 and 3/1/81 and was between or among co-owners of property which was:~~

~~(A) held by such co-owners for all or part of the period between March 1, 1975, and March 1, 1981, and~~

~~(B) the property was eligible for the homeowners' exemption during the entire period of co-ownership.~~

~~(3)~~ (2) The transfer is of an undivided interest~~(s)~~ of less than five percent of the value of the total property and has a value of less than \$10,000; provided, however, that transfers of such interests during any one assessment year (the period from ~~March~~ January 1 through the last day in ~~February of the following year~~ December 31) shall be

accumulated for the purpose of determining the percentage interest and value transferred. When the value of the accumulated interests transferred during any assessment year equals or exceeds five percent of the value of the total property or \$10,000, exclusive of any interest transferred to a spouse or other exempt transfer, only then that percentage of the property represented by the transferred accumulated interests shall be reappraised. For purposes of this subsection, the "accumulated interests transferred" shall not include any transfer of an interest that is otherwise excluded from change in ownership.

Example 2: At the end of the assessment year the value of the accumulated interests transferred equals 3 percent of the value of the total property and the dollar value of these interests is \$12,000. There will be a reappraisal of the transferred accumulated interests because their value exceeds \$10,000.

Example 3: At the end of the assessment year the value of the accumulated interests transferred equal 7 percent of the value of the total property and the dollar value of these interests is \$9,000. There will be a reappraisal of the transferred accumulated interests because they exceed 5 percent of the value of the total property.

~~(4) (3) The transfer creates or terminates a co-owner's interest between spouses. The transfer is one to which the interspousal exclusion applies.~~

~~(5) (4) The transfer between spouses or former spouses terminates a tenancy in common or community property interest in connection with a death or a property settlement agreement or decree of dissolution of a marriage or of a legal separation. The transfer is one to which the parent-child or grandparent-grandchild exclusion applies, and for which a timely claim has been filed as required by law.~~

Authority: Section 15606, Government Code.

Reference: Sections 60, 61, 62, 63, 63.1, 65, 65.1, and 67, Revenue and Taxation Code.

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RULE 462.160 CHANGE IN OWNERSHIP - TRUSTS

(a) **CREATION.** ~~Except as is otherwise provided in subdivision (b) the General Rule.~~ The transfer by the trustor, or any other person, of real property into a trust is a change in ownership of such property at the time of the transfer.

(b) **EXCEPTIONS.** ~~A transfer to a trust is not a change in ownership upon the creation of or transfer to a trust if~~ The following transfers do not constitute changes in ownership:

(1) **Trustor-Transferor Beneficiary Trusts.** The transfer of real property or an ownership interest in a legal entity holding an ownership interest in real property by the trustor to a trust in which the trustor-transferor is the sole present beneficiary of the trust, provided, however ~~However,~~ a change in ownership of trust property does occur to the extent that persons other than the trustor-transferor are or become present beneficiaries of the trust, unless otherwise excluded from change in ownership.

Example 1: M transfers income-producing property to revocable living Trust A, in which M is the sole present beneficiary. Trust A provides that upon M's death, M's brother B becomes a present beneficiary, and income from the trust property is to be distributed to B for his lifetime. Upon M's death, 100% of the property in Trust A, representing B's present beneficial interest undergoes a change in ownership.

(2) **Revocable Trusts.** The transfer of real property or an ownership interest~~(s)~~ in a legal entity holding an ownership interest in real property by the trustor~~(s)~~ to the a trust which is revocable by the trustor~~(s)~~, provided, however ~~However,~~ a change in ownership does occur at the time the revocable trust becomes irrevocable unless the trustor-transferor remains or becomes the sole present beneficiary- or unless otherwise excluded from change in ownership.

(3) **Trustor Reversion Trusts.** The transfer of real property or an ownership interest in a legal entity holding ownership interests in real property by the trustor to a trust in which the trustor-transferor retains the reversion, and the beneficial interest~~(s)~~ of any person~~(s)~~ other than the trustor-transferor does not exceed 12 years in duration.

(4) **Interspousal Trusts.** ~~The exemption afforded interspousal transfers is applicable~~ The transfer is one to

which the interspousal exclusion applies; provided, however, a change in ownership of trust property does occur to the extent that persons other than the trustor-transferor's spouse are or become present beneficiaries of the trust- unless otherwise excluded from change in ownership.

(5) Parent-Child or Grandparent-Grandchild Trusts. The transfer is one to which the parent-child or grandparent-grandchild exclusion applies, and for which a timely claim has been made as required by law. However, a change in ownership of trust property does occur to the extent that persons for whom the parent-child or grandparent-grandchild exclusion is not applicable are or become present beneficiaries of the trust unless otherwise excluded from change in ownership.

~~(5)~~ (6) Proportional Interests. The transfer is to a trust which results in the proportional interests of the beneficiaries in the property remaining the same before and after the transfer.

~~(6)~~ (7) Other Trusts. The transfer is from one trust to another and meets the requirements of (1), (2), (3), (4), ~~or (5)~~, or (6).

~~(c) TERMINATION. Except as is otherwise provided in subdivision (d), the General Rule. The termination of a trust, or portion thereof, constitutes a change in ownership at the time of the termination of the trust.~~

~~(d) Exceptions EXCEPTIONS. A transfer resulting from the termination of a trust is not a change in ownership if The following transfers do not constitute changes in ownership:~~

~~(1) Prior Reappraisal Change in Ownership. Termination results in the distribution of trust property according to the terms of the trust to a person or entity who received a present interest (either use of or income from the property) causing a reappraisal when the trust was created, or when it became irrevocable, or at some other time. provided, however However, another a change in ownership also occurs when the remainder or reversionary interest becomes possessory if the holder of that interest is a person or entity other than the present beneficiary- unless otherwise excluded from change in ownership.~~

Example 2: Following the example set forth in Example 1, Trust A further provides that when B dies, the Trust terminates and Trust property is to be distributed

equally to B's then surviving children, R and S. B dies, Trust A terminates, and the transfers of the Trust property to R and S result in changes in ownership, allowing for reassessment of 100 percent of the real property.

(2) Revocable Trusts. Termination results from the trustor-transferor's exercise of the power of revocation and the property is transferred by the trustee back to the trustor-transferor.

(3) Trustor Reversion Trusts. The trust term did not exceed 12 years in duration and, on termination, the property reverts to the trustor-transferor.

(4) Interspousal Trusts. ~~The exemption afforded interspousal transfers is applicable.~~ Termination results in a transfer to which the interspousal exclusion applies.

(5) Parent-Child or Grandparent-Grandchild Trusts. Termination results in a transfer to which the parent-child or grandparent-grandchild exclusion applies, and for which a timely claim has been filed as required by law.

~~(5)~~ (6) Proportional Interests. Termination results in the transfer to the beneficiaries who receive the same proportional interests in the property as they held before the termination of the trust.

~~(6)~~ (7) Other Trusts. Termination results in the transfer from one trust to another and meets the requirements of (1), (2), (3), (4), ~~or~~ (5), or (6) of subdivision (b).

(e) For purposes of this rule, the term "trust" does not include a Massachusetts or Business Trust, which is taxable as a legal entity and managed for profit for the holders of transferable certificates which, like stock shares in a corporation, entitle the holders to share in the income of the property. For rules applicable to Massachusetts or Business Trusts, see Section 64 of the Revenue and Taxation Code and Rule 462.180, which address legal entities.

Note: Authority: Section 15606, Government Code.  
References: Sections ~~60-67~~ 60, 61, 62, 63, 63.1, 63.1 note, and 64 Revenue and Taxation Code.

**Rule 462.220 CHANGE IN OWNERSHIP -- INTERSPOUSAL TRANSFERS**

Notwithstanding any other provision of ~~Sections~~ Rules 460 through 471 ~~of this code~~, a change in ownership shall not include any interspousal transfer, including, but not limited to:

(a) Transfers of ownership interests in legal entities,

(b) Transfers of ownership interests in legal entities resulting in one spouse obtaining control as defined in Section 64(c) of the Revenue and Taxation Code,

Example 1: Husband (H) owns a 30 percent ownership interest in a partnership and wife (W) owns a 30 percent ownership interest in the same partnership. W transfers her interest to H; H now owns a 60 percent ownership interest. There is no change in ownership.

~~(a)~~ (c) Transfers to a trustee for the beneficial use of a spouse, or the surviving spouse of a deceased transferor, or by a transfer of such a trust to the spouse of the trustor,

~~(b)~~ (d) Transfers which take effect upon the death of a spouse,

Example 2: H and W each own a 30 percent interest in General Partnership (GP). H and W transfer their respective partnership interests to the HW Revocable Trust. No change in ownership. Trust provides that upon the death of the first spouse: the assets of the deceased spouse, including partnership interests in GP, shall be distributed to "A Trust", and the assets of the surviving spouse, including partnership interests in GP, shall be distributed to "B Trust." Surviving spouse is the sole present beneficiary of both A Trust and B Trust. No change in ownership upon the death of the first spouse.

~~(c)~~ (e) Transfers to a spouse or former spouse in connection with a property settlement agreement, including post-dissolution amendment thereto, or decree of dissolution of a marriage or legal separation, or

~~(d)~~ (f) The creation, transfer, or termination, solely between spouses, of any co-owner's interest, or

~~(e)~~ (g) The distribution of property of a corporation, partnership, or other legal entity to a spouse or former spouse having an ownership interest in the entity, in

exchange for the interest of such spouse in the legal entity in connection with a property settlement agreement or decree of dissolution of a marriage or legal separation.

Note: Authority: Section 15606, Government Code.  
Reference: Sections 60, 61, 62, 63, 65, 65.1, and 67,  
Revenue and Taxation Code.

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Rule 462.240 THE FOLLOWING TRANSFERS DO NOT CONSTITUTE A CHANGE OF IN OWNERSHIP.

(a) The transfer of bare legal title, e.g.,

(1) Any transfer to an existing assessee for the purpose of perfecting title to the property.

(2) Any transfer resulting in the creation, assignment, or reconveyance of a security interest not coupled with the right to immediate use, occupancy, possession or profits.

(b) Any transfer caused by the substitution of a trustee.

(c) Any purchase, redemption or other transfer of the shares or units of participation of a group trust, pooled fund, common trust fund, or other collective investment fund established by a financial institution.

(d) Any contribution of real property to an employee benefit plan, any acquisition by an employee benefit plan of the stock of the employer corporation pursuant to which the employee benefit plan obtains direct or indirect ownership or control of more than 50 percent of the voting stock in the employer corporation, or the creation, vesting, transfer, distribution, or termination of a participant's or beneficiary's interest in such a plan. The terms used herein shall have the meaning ascribed to them in the Employee Retirement Income Security Act of 1974, which is codified as United States Code annotated, Title 29, Section 1002. (The term "any contribution" as used in Section 66(b) of the Revenue and Taxation Code and this section means only those ~~original~~ contributions of real property made to an employee benefit plan by an employer, a group of employees, or both, without any consideration.)

~~(e) Any transfer of title between an individual and a legal entity or between legal entities, such as from a co-tenancy to a partnership, a partnership to a corporation, a trust to a co-tenancy, or an individual to a legal entity, which results solely in a change in the method of holding title and in which the proportional interests of the transferors and transferees, whether represented by stock, partnership interest, or otherwise, remain the same after the transfer. (Such transferees shall be considered to be the "original co-owners" of the property for purposes of determining whether a change in ownership has occurred upon the subsequent transfer(s) of the ownership interests in the property.)~~

~~(f)~~(e) Any transfer of property or an interest therein between a corporation sole, a religious corporation, a public benefit corporation, and a holding corporation as defined in Section 23701h of the Revenue and Taxation Code holding title for the benefit of any of the aforementioned corporations, or any combination thereof (including any transfer from one such entity to the same type of entity), provided that both the transferee and the transferor are regulated by laws, rules, regulations, or canons of the same religious denomination.

(f) Any transfer, occurring on or after January 1, 1983, which results from the reformation or correction of a deed which, by mistake, inaccurately describes the property intended to be conveyed, or adds or omits some term not agreed to by the parties, or in some other manner fails to express the true intentions of the parties.

Example 1: A agrees to sell one acre to B. The deed mistakenly describes a two-acre area. Reformation of the deed to describe the original acre intended to be transferred is not a change in ownership.

(g) Any transfer, occurring on or after January 1, 1983, of an eligible dwelling unit from a parent(s) or legal guardian(s) to a minor child or children or among minor siblings resulting from a court order or judicial decree due to the death of one or both of the parents. An "eligible dwelling unit" means the dwelling which was the principal place of residence of the minor child or children prior to the transfer and remains such after the transfer.

(h) Any transfer of property to a disabled child, whether minor or adult, upon the death of a parent pursuant to Section 62(n) of the Revenue and Taxation Code.

(i) Any transfer, on or after January 1, 1985, of a mobilehome park or of rental spaces in a mobilehome park pursuant to section 62.1 of the Revenue and Taxation Code.

(j) Any transfer of a mobilehome park or of rental spaces in a mobilehome park pursuant to section 62.2 of the Revenue and Taxation Code.

Note: Authority: Section 15606, Government Code.

Reference: Sections 60, 61, 62, 62.1, 62.2, 64, 66, and 67,  
Revenue and Taxation Code.

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